U.S. Department of Justice

Immigration and Naturalization Service

H2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Honolulu Date: SEP 14 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

DISCUSSION: The waiver application was denied by the District Director, Honolulu, Hawaii, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of New Zealand who was found to be inadmissible to the United States under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant married a native of American Samoa and United States national in April 1994 and is the beneficiary of a petition for alien relative. The applicant seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside with his spouse, his two children and his father in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly.

On appeal, counsel argues that there is sufficient evidence of hardship which was not adequately presented by the applicant who appeared without representation. Counsel also states that the applicant's criminal record is incorrect and certain evidence in the applicant's passport entered by a U.S. Consular Officer may raise the issue of estoppel with respect to that record. Counsel requested an additional 60 days in which to submit a brief in support of the appeal. More than 60 days have elapsed since the appeal was filed on March 22, 2000 and no additional documentation has been entered into the record. Therefore, a decision will be rendered based on the present record.

The record contains a police report from New Zealand that contains the following information regarding the applicant:

> (1) On May 2, 1975, he was convicted of sexual intercourse with a girl 12 to 16. He was fined $200 and placed on probation for one year.
>
> (2) On December 22, 1975, he was convicted of common assault. He was imprisoned for six months.
>
> (3) On June 21, 1976, he was convicted of common assault and placed on probation for one year.
>
> (4) On April 29, 1985, he was convicted of false report, careless driving and unlicensed driving. he was fined $500 on each count and disqualified from driving for three months.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

[redacted]

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.-Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, is inadmissible.

Section 212(h) WAIVER OF SUBSECTION (a)(2)(A)(i)(I),...-The Attorney General may, in his discretion, waive application of subparagraph (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for

[redacted]

> permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

The record contains a memorandum from the American Embassy in Wellington dated January 8, 1966 indicating that the applicant's name was entered into its lookout system showing ineligibility under §212(a)(2)(A)(i)(I) entered by Melbourne in May 1987, Wellington in June 1981 and Sydney in May 1987. The memorandum also indicates that the American Counsel in Sydney entered the applicant's name as inadmissible under § 212(a)(6)(C) of the Act in August 1993.

The record reflects that the applicant was issued a nonimmigrant visa on June 30, 1993 by the U.S. Embassy in Sydney containing a consular officer's notation "No longer ineligible under Section 212(a)(2)(A)(i)(I) as per 22 C.F.R. 40.7(A)(9) Note 6." He was admitted to the United States on June 30, 1993. The copy of 22 C.F.R. 40.7 available for review contains a blank page marked Reserved.

The applicant was interviewed by a Service officer on March 14, 1996 and again on June 9, 1999 without presence of counsel. The applicant stated under oath on both occasions that he had only been arrested one time and in jail one time for the incident at the bar. The applicant stated on both occasions that he did not remember having been arrested for having sex with a young girl.

The issue regarding the applicant being found inadmissible under § 212(a)(6)(C) of the Act by the American Embassy in Sydney remains unclarified in the record.

The applicant filed his application for visa or adjustment of status on September 26, 1995. Now, at least 15 years have elapsed since the applicant committed his last inadmissible act. Therefore, the applicant is eligible for the waiver provided by § 212(h)(1)(A) of the Act.

Eligibility now hinges upon the applicant showing his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, he has been rehabilitated and he warrants a favorable exercise of the Attorney General's discretion.

Although the record contains documentation regarding the applicant's good behavior and helpfulness to family members, evidence in the record also indicates the applicant has refused to completely disclose his criminal and arrest record. The applicant

has not shown that he had sufficiently reformed or rehabilitated to warrant a favorable exercise of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.